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Federal Communications Commission
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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974).

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FCC MEDIA BUREAU RULES THAT ECHOSTAR'S "TWO-DISH" PLAN VIOLATES LAW AND FCC RULES

Washington, DC – The Media Bureau of the Federal Communications Commission ruled today that EchoStar Communications' "two-dish" plan, as implemented, violates both the Communications Act and the Commission's rules. The Bureau said that EchoStar must come into compliance immediately and file a progress report within 30 days. The Bureau also suggested several ways in which EchoStar could come into compliance with the law and FCC rules.

Today's action is in response to a joint Emergency Petition from the National Association of Broadcasters ("NAB") and the Association of Local Television Stations ("ALTV") asking for modification or clarification of the Commission's rules concerning carriage of local television broadcast stations by satellite carriers pursuant to the Satellite Home Viewer Improvement Act of 1999 (the "SHVIA"). NAB and ALTV asked the FCC to take prompt emergency action to address satellite carriage of certain local television broadcast stations in a manner that requires subscribers to obtain a second satellite dish antenna. In most of the markets in which EchoStar offers local-into-local service, EchoStar is carrying one or more of the local broadcast stations on a "wing" satellite that necessitates subscriber use of a second satellite dish. The Media Bureau rejected EchoStar's argument that because it offers the second dish without charge, it thereby complies with the FCC's "carry-one-carry-all" rules. The Bureau noted that although it may be possible to offer certain local stations by use of a second antenna without engaging in prohibited discriminatory conduct, the Bureau found that EchoStar has not done so in this case.

Ken Ferree, Chief of the Media Bureau, said, "Today we took an important and necessary action to ensure that all broadcast stations are carried in a non-discriminatory manner. EchoStar's two-dish plan was implemented in such a way as to make some stations unavailable to subscribers as a practical matter. The Bureau expects that the remedial steps outlined in the order will address this discrimination and that EchoStar will quickly and completely comply with the letter and spirit of the SHVIA as intended by Congress and upheld by the courts."

The Media Bureau found that EchoStar violated statutory and regulatory requirements to offer all local stations in a nondiscriminatory manner on the electronic program guide (EPG) and menu because the stations available only on a second dish are not listed on the EPG unless the second dish is installed and are not included on the menu of stations offered in the same manner as the stations available on the first dish.

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The Bureau ruled that EchoStar violated the statutory prohibition on discrimination among local stations based on price because:

- subscribers who are not aware of the missing stations pay the full \$5.99 package “price” for all the local stations but receive only the stations on the first dish;
- the “price” for the stations carried on the second dish includes the significant time, trouble, and inconvenience associated with getting EchoStar to install the second dish and is therefore higher than the price for the stations readily available on the first dish; and
- local stations that are available only on a second dish are harmed by this discriminatory manner of carriage, particularly in light of EchoStar’s failure to adequately inform subscribers of the need for and procedure to obtain a second dish.

The Bureau also said that EchoStar violated the statutory and regulatory requirement for contiguous channel placement because subscribers cannot find or tune to the stations carried on the wing satellites because the channel numbers for these stations are not included in the list of channels unless a second dish is installed.

EchoStar is required to come into compliance immediately and file compliance reports. EchoStar must submit to the FCC, 30 days after release of today’s ruling, a compliance plan and report describing the steps taken and planned to be taken to implement the requirements of the ruling; and file updated reports in 90 and 150 days.

The Media Bureau outlined several actions EchoStar could take to comply.

- Move local stations off the wing satellites and onto satellites that serve the continental (CONUS) thus eliminating the need for a second dish; or move all stations in a market onto the wing satellite thus requiring a second dish for all local stations.
- Directly and clearly notify existing and new local-into-local subscribers that they are not receiving all the local stations for which they are paying unless EchoStar installs a second dish, which EchoStar will provide without charge for equipment or installation.
- Automatically install a second dish along with the first dish if the subscriber signs up for local-into-local service.
- Explain on the website that a second dish is needed to receive all local stations in any markets in which EchoStar is unable to move all the stations onto a CONUS satellite.
- Train customer service representatives, distributors and retailers on the need for and means to obtain the second dish.
- Present all local stations together on the EPG and any electronic or hard copy menu, and include any information on how to obtain the second dish without charge.

The Bureau said that if EchoStar is unable to comply with these requirements, it may apply for a temporary waiver to avoid terminating local-into-local service to any markets currently served. The Bureau will address specific issues in pending individual must carry cases.

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Action by the Chief, Media Bureau, April 4, 2002, by Declaratory Ruling and Order (DA 02-765).

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